

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Toll Free Service Access Codes)

CC Docket No. 95-155

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COMMENTS OF PROMOLINE, INC.

Promoline, Inc. ("Promoline"), by counsel and pursuant to 47 C.F.R. § 1.415, submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.

Promoline is a New York-based 800 service provider and Responsible Organization ("RespOrg") that provides 800 service and manages the SMS/800 customer records for dozens of subscribers. Many of the rules and policies proposed in the NPRM will directly affect the way in which 800 service providers and RespOrgs conduct their businesses. Thus, Promoline has a significant interest in the outcome of this proceeding.

I. THE COMMISSION SHOULD ADOPT STRINGENT RULES TO HELP CURB THE PRACTICE OF WAREHOUSING TOLL FREE NUMBERS.

Promoline urges the Commission to adopt rules and policies to help curb the practice of warehousing toll free numbers. "Warehousing" refers to the practice among RespOrgs of reserving 800 numbers without first having subscribers for those numbers. Although this

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practice is contrary to established industry guidelines,^{1/} RespOrgs have strong incentives to warehouse toll free numbers. For example, warehousing enables RespOrgs to obtain desirable vanity numbers for future assignment, and to build a ready supply of numbers to meet future customer demand. Nevertheless, recent experience has shown that warehousing prevents the efficient distribution of numbers to RespOrgs that have actual subscribers needing working toll free numbers. As a result, the Commission tentatively concluded that warehousing is an unreasonable practice that is inconsistent with the public interest.^{2/} Promoline concurs with this conclusion and urges the Commission to adopt the following proposals to help govern the warehousing of toll free numbers.

A. The Commission Should Shorten the Amount of Time a RespOrg May Take To Convert a Number from Reserved to Working Status.

The Commission should reduce to 90 days the amount of time a RespOrg is given to convert a toll free number from "reserved" to "working" status.^{3/} The *Industry Guidelines* currently provide that a number may remain in reserved status for 60 days,^{4/} and assigned status

^{1/} See *Industry Guidelines for 800 Number Administration*, § 2.2.5 (June 8, 1995)[hereinafter *Industry Guidelines*](stating that an 800 number may only be reserved by a RespOrg on behalf of a "specific prospective customer").

^{2/} NPRM ¶ 32.

^{3/} A toll free number typically passes through three stages before it becomes operational - "reserved," "assigned," and "working." Reserved numbers are those that have been requested by a RespOrg on behalf of a customer. Assigned numbers have specific customer routing information associated with them in the SMS/800 database, but have not yet been activated in the regional Service Control Points ("SCPs"). Working numbers have been loaded in the SCPs and may be used to complete 800 service calls.

^{4/} § 2.4.3.

for 12 months,^{5/} before being converted to working status.^{6/} The Commission properly recognized that "the guidelines permit more time for [this conversion] process than is sound,"^{7/} and proposed reducing the amount of time a number can remain reserved to 30 days, and the amount of time a number can remain assigned to 4 months.^{8/} Promoline supports the Commission's proposal to limit number reservations to 30 days, but recommends that the Commission shorten the assignment interval to 60 days, instead of 4 months, so that the total "reserved-to-working" interval is 90 days.

Warehousing is feasible for RespOrgs because the *Industry Guidelines* permit inordinately long lag times during the various stages in the number deployment process. The less time RespOrgs are permitted to "store" non-working numbers, the less feasible warehousing will become. By reducing the reserved-to-working interval to 90 days, the Commission will significantly diminish the incidence of warehousing since RespOrgs will be forced either to use their numbers or to lose them.

The 12 month interval allowed for assigned numbers is one of the longest lag times under the *Industry Guidelines*, yet the guidelines offer no explanation as to why so much time is needed. Indeed, the only difference between assigned and working numbers is that the latter have been loaded into the ten regional SCPs.^{9/} Surely sixty days is more than sufficient to enter

^{5/} § 2.4.4.

^{6/} Numbers that exceed these time limits are automatically recalled to the general pool for assignment by the SMS/800 administrator. *See Id.* § 2.3.2.

^{7/} NPRM ¶ 18.

^{8/} *Id.*

^{9/} *See supra* note 3.

the customer routing information for a number into the SCPs. Therefore, shortening the reserved-to-working interval to 90 days will adequately accommodate the administration of the SMS/800 database and the SCPs, and will benefit the industry by ensuring a more efficient allocation of toll free numbers.

B. The Commission Should Require RespOrgs To Certify that Reserved Numbers Are for Identified Customers.

The Commission should require RespOrgs to certify, on a quarterly basis, and under penalty of false statement, that: (1) there is an identified subscriber who has agreed to be billed for service associated with each toll free number requested from the database; and (2) there is an identified, billed subscriber before switching a number from reserved or assigned to working status.^{10/} This certificate should apply to all numbers reserved, assigned, and/or converted to working status by a RespOrg during the quarter immediately preceding the filing. The certificate should be directed to Database Services Management, Inc. ("DSMI") and made available to the Commission for inspection upon request. In conjunction with the penalty provisions proposed in Section I.D. below, such a certification requirement will help to ensure that RespOrgs do not reserve a number without having a "specific prospective customer" for the number.

^{10/} See NPRM ¶ 34.

C. The Commission Should Adopt a 15% Permanent Cap on Reserved Numbers.

The Commission should codify the number reservation policy contained in the *Industry Guidelines* -- guidelines that a RespOrg presently may choose to follow or disregard without official sanction.^{11/} Specifically, the Commission should limit the amount of toll free numbers a RespOrg may hold in reserve status at any given time to 1000, or 15 % of its total quantity of working numbers, whichever is greater.^{12/}

The Commission has asked whether it should impose a permanent cap on reserved numbers of 3 % or some other number less than 15 % in an effort to prevent a large pool of toll free numbers from remaining in reserved status.^{13/} Promoline supports codifying a reserve cap for enforcement purposes, but the Commission should not adopt a limit lower than 15 % for the following reasons. First, a lower limit is not needed to prevent a large pool of numbers from remaining in reserved status. The certification requirement discussed above, as well as a substantially reduced reserved-to-working interval, are adequate to ensure that unsubscribed numbers do not languish in reserved status. Second, a lower cap would have a negative and disproportionate effect on small RespOrgs. If a 3 % cap were imposed, for example, a large RespOrg with 100,000 working numbers could maintain 3,000 numbers in reserve status, whereas a RespOrg with only 5,000 working numbers would be limited to 150 numbers. Such a limit would restrict unfairly the growth of small RespOrgs. Third, the 15 % cap strikes an appropriate balance between the legitimate need of RespOrgs to hold numbers in reserved status,

^{11/} See *Industry Guidelines* § 2.2.8.

^{12/} *Id.* § 2.2.5.

^{13/} NPRM ¶ 33.

and the inefficiencies of maintaining a large pool of reserved, but unassigned, numbers. Fourth, a 15% cap will be less disruptive to the business operations of RespOrgs or 800 service providers in general since it represents the current industry standard.

D. The Commission Should Establish Stringent Penalties for Violation of Its Warehousing Rules.

The Commission has asked what penalties it should impose on RespOrgs found to be warehousing toll free number, and tentatively concluded that it possesses authority to fine and/or de-certify a RespOrg for violating any warehousing rules it may adopt.^{14/} Promoline supports this conclusion and urges the Commission to levy a substantial fine against any RespOrg that violates the Commission's warehousing rules, and to de-certify a violating RespOrg after three offenses. Strict enforcement of these penalties is necessary to counter the incentives RespOrgs have to warehouse toll free numbers.

II. TOLL FREE SUBSCRIBERS WITH AN ECONOMIC INTEREST IN THEIR TELEPHONE NUMBERS SHOULD HAVE THE OPTION OF PROTECTING THAT INTEREST THROUGH A RIGHT OF FIRST REFUSAL.

Promoline urges the Commission to provide toll free subscribers with a right of first refusal concerning the toll free analogues to their numbers. Telephone numbers beginning with "1-800" are widely recognized as toll free. When the 888 service access code ("SAC") becomes available in March 1996, however, consumers soon will learn to associate both 800 and 888

^{14/} *Id.* ¶ 33.

numbers with toll free service. This inevitably will produce some confusion concerning the proper prefix to dial to reach a particular toll free subscriber.

Consumer confusion will have at least two undesirable effects. First, it will facilitate the ability of an 800 subscriber's competitors to trade on the goodwill the subscriber has developed in its 800 vanity number.^{15/} For example, if a start-up florist were to obtain the number 1-888-FLOWERS, it would benefit unfairly from the reputation 1-800-FLOWERS has established for its number, and 1-800-FLOWERS could lose potential customers. Second, the reputation of 1-800-FLOWERS itself could suffer if callers to 1-888-FLOWERS receive poor service and unwittingly assume the service is from 1-800-FLOWERS. Neither of these results should be permitted.

The most effective way to resolve these problems is to provide toll free subscribers with a right of first refusal concerning the toll free analogues to their numbers.^{16/} This right should be extended to all toll free subscribers regardless of the apparent value of their numbers, but to exercise the right, a subscriber should be required to pay a reasonable, one-time fee of at least

^{15/} Harm also will result if *non-competitors* obtain equivalent toll free numbers. An 888 subscriber, for example, will be billed for misdialed calls (those calls intended for an 800 subscriber), and the 800 subscriber could lose potential customers.

^{16/} A possible scenario for implementing the right of first refusal would require an 800 subscriber to notify its RespOrg if it intends to exercise its right. (The right need not actually be exercised at this time, nor the one-time fee paid; notice would serve only to alert other potential subscribers that a prior claim to the number may be asserted.) The RespOrg would notify DSMI, and DSMI would attach a code to the subscriber's 888 analogue in the SMS database. If a second RespOrg sought to reserve the earmarked number, DSMI would inform the second RespOrg that the number is subject to a right of first refusal, and at that time, would inform the original RespOrg that the subscriber's option fee must be paid within 60 days to prevent the number from being assigned to the other RespOrg.

\$5,000.^{17/} The one-time fee will serve as a self-selecting mechanism, helping to ensure that only those subscribers with a substantial and quantifiable economic interest in their toll free numbers reserve numbers from the pool of new toll free SACs.^{18/}

Vesting 800 subscribers with a right of first refusal will properly place the burden of appraising vanity numbers on the parties best able to do so -- those who will suffer the most harm if their 888 analogues are assigned to other entities. In other words, a right of first refusal will permit incumbent subscribers to judge individually whether the exercise price for the right outweighs the potential economic losses their businesses may sustain if they allow their numbers to be otherwise assigned. Furthermore, a right of first refusal will lessen consumer confusion by reducing the likelihood that direct competitors will share toll free analogues.

The Commission has asked whether subscribers should be required to pay for the right of first refusal through a competitive bidding process.^{19/} Competitive bidding should not be used for two reasons. First, incumbent subscribers with little capital would be unfairly prejudiced under such a system since they easily could be outbid by a well financed competitor. Second, the only parties likely to bid against incumbent subscribers are direct business competitors or speculators who intend to sell the numbers to competitors. If either of these

^{17/} Revenues generated by means of this fee should be used to educate consumers about future toll free SACs through public service announcements. *See* NPRM ¶ 41.

^{18/} Promoline recognizes that a one-time fee alone may be inadequate to deter number brokering, and urges the Commission to codify the industry guidelines against this practice. *See Industry Guidelines* § 2.2.1; NPRM ¶ 16. Stringent enforcement of these anti-brokering rules, in conjunction with the warehousing rules and option fee requirement discussed herein, should help to prevent the inefficient depletion of numbering resources.

^{19/} NPRM ¶ 41.

parties were to outbid the incumbent, the Commission's purpose for establishing a right of first refusal (to protect the incumbent's goodwill in a number) would be frustrated.^{20/}

III. CONCLUSION

The Commission is seeking to assure, by means of this proceeding, that toll free numbers are allocated on a fair, equitable, and orderly basis. By adopting the warehousing and vanity number rules recommended herein, the Commission will take a substantial step toward achieving that goal.

Respectfully submitted,

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^{20/} See *id.* ¶ 35.